

Before the
United States Department of Transportation
Research and Special Programs Administration
49 CFR Part 171, et al.

Submission of Comments

In Re:

Docket No. RSPA-2002-13658 (HM-215E)

Harmonization with the United Nations Recommendations, International Maritime
Dangerous Goods Code, and International Civil Aviation Organization's Technical
Instructions

On Behalf of the
National Paint and Coatings Association, Inc.

Date Submitted:

February 3, 2003

Submitted By:

Heidi K. McAuliffe
Counsel, Government Affairs

David Darling
Director - Environmental Affairs
Environmental, Industry & International
Affairs

National Paint & Coatings Association
1500 Rhode Island Avenue
Washington, D.C. 20005
(202)462-6272

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I. Statement of the Issue

RSPA is proposing to amend the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping name, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. The proposed rule intends to provide additional harmonization with international transportation requirements by more fully aligning the HMR with the corresponding biennial updates of the UN Recommendations, the International Maritime Dangerous Goods Code (IMDG Code) and the International Civil Aviation Organization's Technical Instructions (ICAO Technical Instructions). In addition, some of the proposed changes are the result of specific requests from the regulated industry, suggestions from other DOT modal administrations, and certain RSPA initiatives.

II. Statement of Interest

The National Paint and Coatings Association, Inc. (NPCA) is a voluntary non-profit industry association, originally organized in 1888 and comprising today of some 400 members who are engaged in the manufacture and distribution of paint and related products and the raw materials used in the production of paint, coatings, caulks, sealants and adhesives. Our membership collectively produces about 75% of the total national volume of paints and allied products.

Overall, the paint and coatings industry is comprised of approximately 900 manufacturing facilities which collectively produce more than one billion gallons annually. The paint and coatings industry utilizes all transportation modes to distribute products throughout the nation and increasingly, across the globe. Advocating uniform national standards and internationally harmonized shipping regulations will ensure the safest and most efficient methods for moving raw materials from facility to facility and our products from the factory to the customer. NPCA and indeed, our Transportation and Distribution Committee, are very interested in this rulemaking.

NPCA has a long history of assisting DOT with complex regulatory questions and the industry looks forward to a continuing rapport with RSPA.

III. Comments

In this and in every future endeavor to harmonize with international standards, NPCA encourages RSPA to promptly propose and finalize these final rules. The ICAO Technical Instructions, amendments to the IMDG Code and the UN Model Recommendations are updated and amended on a regularly scheduled basis. It should not be difficult for RSPA to coordinate its activities under the HM-215 docket so that the regulated community could begin to change their own internal systems to one domestic and international standard. This effort would greatly improve efficiencies in our member companies and improve the safety and security of dangerous goods in transportation.

While HM-215E is a very robust proposal which proposes numerous changes to the HMR in order to harmonize with the international standards, NPCA will only comment on those proposals which will directly impact the paint and coatings industry.

Specific Comments on Proposed Sections 49 CFR Section 172

Section 172.102 – Special Provision 149 Limited Quantities Maximum Net Capacity
This proposed special provision would increase the maximum net capacity of inner packagings in Packing Group II to 5 L when the material is transported as a limited quantity for specific substances including UN 1133 (adhesives), UN 1139 (coating solutions), UN 1210 (printing ink), UN 1263 (paint and paint related materials), UN 1306 (wood preservatives), UN 1866 (resin solutions), and UN 3269 (polyester resin kit).

NPCA supports the increase in the Limited Quantities Maximum Net Capacity and believes that this change will reduce the likelihood of incorrect use of this provision. As there are currently different quantity limits for PG II and PG III, there is often confusion about when one may use the LTD QTY exception. If the quantities for both PG II and PG III were the same, the potential for errors would be greatly reduced. In addition, NPCA requests that Special Provision 149 clearly state that it applies to consumer commodities.

Section 172.202 – Subsidiary Hazard Class/Division Numbers

While NPCA supports adoption of this provision into the HMR in order to promote harmonization and consistency with IMDG, it is necessary to provide ample time for the regulated community to make adjustments to computer-based document production activities.

Section 172.202 – Shipping Paper Indication of Total Quantity of Hazardous Materials

Revisions to this section are proposed to require an indication of the total quantity of hazardous materials being shipped. The proposed amendments would make it mandatory for shippers to indicate on shipping papers the types and number of packages, such as drums, boxes, jerricans, etc., being used to transport hazardous materials by all modes of transportation (as required by IMDG). RSPA is proposing a one-year transition period as it believes that this amount of time will allow sufficient time to train employees and to ease any burden on small entities.

NPCA requests Section 172.202 clearly state that the indication of total quantity of dangerous goods being transported can be located *either before or after* the basic shipping description. Several of our members have indicated that they are already making this indication -- some locate this indication in front of the basic description and some locate this after the basic description. To limit the indication to one place or the other will cause significant hardship in that it will require systems changes and new forms with no real safety benefit.

NPCA also requests that the transition time for this requirement be extended to three years. For those not already making this indication, this change will cause problems with existing electronic shipping paper preparation programs, resulting in a significant amount of reprogramming for our member companies. A one-year transition period is not sufficient to allow for the internal technological changes that must be accomplished along with the training necessary for employees.

Section 172.301 – Limited Quantity Marking – Proper Shipping Name on Package **Section 172.315 – Limited Quantity Marking – ID number within a Diamond**

NPCA supports the adoption of these two provisions as they are consistent with the Twelfth Edition of the UN Recommendations for the Transport of Dangerous Goods and the European agreement concerning the international carriage of dangerous goods by road (the ADR). Last year, NPCA petitioned Transport Canada to permit shipment of

certain goods into Canada in this fashion. While Transport Canada neglected to approve this particular request, inclusion of these provisions in the HMR will permit unfettered shipment of goods marked in this fashion into Canada under the reciprocity provisions of the HMR.

Implementation of this change, however, could be very difficult since it will require a significant level of retraining and capital cost for new labels and/or cartons. NPCA urges RSPA to provide an extended transition period, at least three years, for this change to allow companies to use up existing packagings and procure new stock.

Section 172.323 – Air Eligibility Marking

Section 173.25 – Air Eligibility Markings for Overpacks

Section 173.27 – Absorbent Materials for Air Transportation

Section 175.30 – Air Eligibility Marking

NPCA supports adoption of these provisions into the HMR in order to promote harmonization and consistency with IATA and the ICAO Technical Instructions.

Section 173.22 – Shippers Responsibility to Comply

Section 173.24 – Integrity of Packagings

Although NPCA supports the principle that shippers play an integral role in ensuring the integrity of packaging and making sure that shipments of dangerous goods comply with the HMR, NPCA is wary of the application of these “general duty” types of requirements. Overzealous law enforcement personnel have, on occasion, used these kinds of provisions to merely to “make their presence known.” The HMR already give RSPA and other law enforcement personnel the authority to enforce the requirements under the regulations. There is no need to add any additional “general duty” type requirements which do not enhance the safe practices of shippers or the security of shipments. Since there is very little discussion of these sections in the proposal’s preamble, it is difficult to discuss the need for these amendments.

Sections 173.152 – PG III Inner Packaging Net Capacity

Sections 173.154 – PG III Inner Packaging Net Capacity

NPCA supports adoption of these provisions. Increasing the capacity for shipping under these provisions to 5 L will help increase efficiencies, thereby saving money for the regulated community. In addition, establishing a threshold of 5 L for this type of activity helps compliance efforts and hopefully, will help reduce errors.

Section 178.2 – Packaging Manufacturer Information

NPCA encourages RSPA to adopt requirements for the packaging manufacturers. If shippers are being required to adhere to certain standards regarding closure, then the package manufacturers must be required to comply with a uniform standard for providing certain types of information.

IV. Conclusion

NPCA and its Transportation and Distribution Committee are pleased to have this opportunity to comment on this NPRM. We look forward to continuing to work with RSPA in the future on this and any other matters affecting the paint and coatings industry.

Respectfully submitted,

Heidi K. McAuliffe
Counsel
Government Affairs

David Darling
Director
Environmental Affairs